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Food Objectives Corp. a/k/a All-Pro Vending and International Union, United Automobile Aerospace & Agricultural Implement Workers of America UAW. Case 2-CA-29891

May 27, 1999

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN
AND BRAME

On April 13, 1998, the National Labor Relations Board issued a Decision and Order,¹ inter alia, ordering Food Objectives Corp. a/k/a All-Pro Vending, the Respondent, to make whole certain of its unit employees for loss of earnings and other benefits resulting from the Respondent's failure to bargain with the Union about the effects of its decision to close its facility in North Tarrytown, New York in violation of the National Labor Relations Act. On September 17, 1998, the United States Court of Appeals for the Second Circuit enforced the Board's Order.

A controversy having arisen over the amount of backpay due the discriminatees, on November 19, 1998, the Regional Director for Region 2 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.²

By letter dated February 5, 1999, and sent by certified mail and regular mail, the Board agent advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by February 19, 1999, summary judgment would be sought. The letter sent by certified mail was returned after three attempts. The Respondent filed no answer.

On April 29, 1999, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. On April 30, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The

Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due the discriminatees is as stated in the compliance specification and we will order payment by the Respondent of those amounts to the discriminatees, plus interest accrued on those amounts to the date of payment.³

ORDER

The National Labor Relations Board orders that the Respondent, Food Objectives Corp. a/k/a All-Pro Vending, Newton, New Jersey, its officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the amounts following their names, minus tax withholdings required by Federal and state laws, plus interest to be computed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987):

Mary Dickey	\$643.00
Katherine Dyckman	643.00
Santiago Gonzalez	690.00
Thomas Green	620.00
Mary Minella	626.00
Mary Simmons	645.00
Luther Boyd	702.00
Lavern Pinckney	702.00
TOTAL	\$5,271.00

¹ 325 NLRB No. 112.

² Although a copy of the compliance specification was served on the Respondent at an address obtained from the West Caldwell, New Jersey office of the United States Postal Service, it was subsequently returned marked as "unclaimed." Further attempts to contact the Respondent by certified mail to advise it of its obligation to answer the specification met with similar results. The Respondent's failure or refusal to claim certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). A copy of the compliance specification was also served by regular mail and was not returned.

³ The Regional Director reserved the right to amend the specification to reflect additional amounts that may be owed to the employees.

Dated, Washington, D.C. May 27, 1999

John C. Truesdale, Chairman

J. Robert Brame III, Member

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD